

THE LATE (2)
PROCEEDINGS
AND
VOTES

OF THE
PARLIAMENT of SCOTLAND;

Read from page 41 to 74 in Contained in an political reflections

ADDRESS

Delivered to the

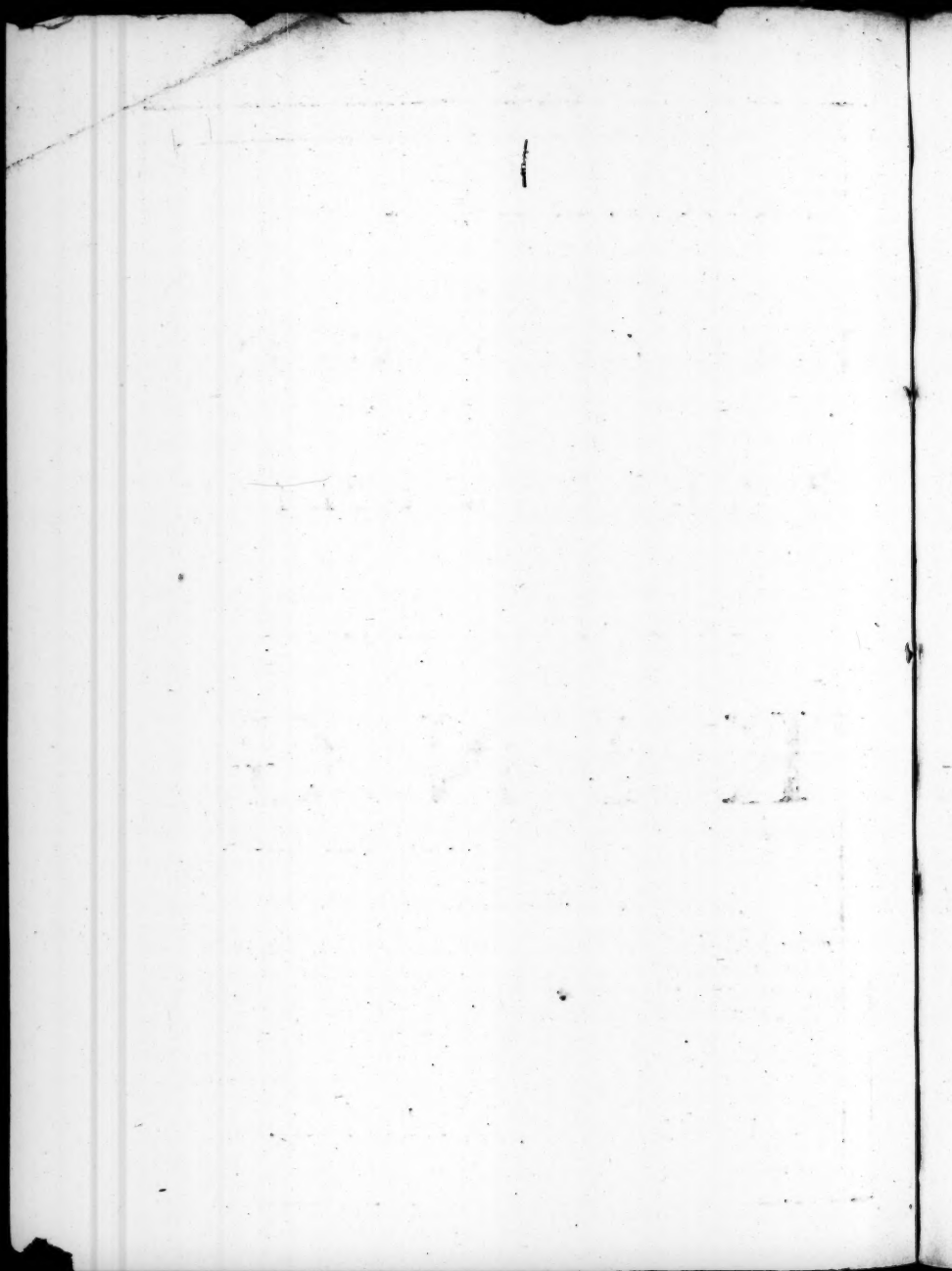
KING,

Signed by the Plurality of the Members thereof,

Stated and Vindicated.

Scilicet res ipsa aspera est, at vos non timetis; sed inertia & mollitia animi, alius alium expectantes cunctantini; videlicet diis immortalibus confisi, qui hanc rempubl. in maximis sepe periculis servaverunt. At non votis neq; suppliciis muliebribus auxilia deorum parantur. Vigilando, agendo, bene consulendo, prosperè omnia cedunt: ubi socordia tete atq; ignavia tradideris, nequiquam deos implores; irati infestiq; sunt. Cato apud Salust.

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THE LATE
 Proceedings and VOTES
 OF THE
 PARLIAMENT
 O F
SCOTLAND, &c.

TO remain silent under the Aspersions which some busy, but either weak or ill Men, are endeavouring to fasten, not only upon the Proceedings, but upon divers of the most Honourable and Loyal Members of Parliament, were to be no less treacherous to his Majesty, than careless of the Reputation of that whole Illustrious Body ; as well as of the Integrity of those Persons who are said to have so much influenced the Transactions of it ; and whose chief Crime (with those that Malign and Traduce them) is their having expressed so much Affection and Zeal for His Majesty's Person and Service : And as the representing their Actions in a true Light, is all that is needful, both to justify and commend them ; so whosoever will be at the pains to examine them, will find them adjusted to all the Rules of Law, Religion, and Policy. And as it is not to be doubted, but that whensoever the Parliament Assemblies,

they will both vindicate their Proceedings, in Customary and Legal Methods, and exert that Authority which is essential to them, over those of their own Members, by whom they have been slandered; so all that is now to be endeavoured in their behalf, is to vouchsafe unto the *English* Nation (to whom they have been misrepresented) such a brief Account of their Transactions, with the Occasions, Reasons, and Motives of them; as may not only manifest the Wisdom and Loyalty of that Parliament, but demonstrate beyond all contradiction, that the only design they have been pursuing, was to preserve and maintain His Majesties Honour, secure and establish him an Interest in the Love and Hearts of his People, and make His Throne firm and durable.

It is too evident, either to be denied or Apologized for, that all the Laws, Privileges, and Rights of the Kingdom of *Scotland*, have under the Late Reigns, been not only Usurped upon and Invaded, but Subverted and Overthrown. For by gradual Inlargements of the Prerogative, beyond what was allowed by the Rules of the Constitution, and the Statutes of the Realm, the legal and regular Monarchy of the Nation, was swelled into an Arbitrary and Despotick Power. So that all the Franchises and Rights, which by Original Contracts and Subsequent Laws had been reserved unto the People, were either overthrown, or enjoyed precariously. And we are compelled to say, that the Coalition of *Scotland* with *England*, under one Monarch, without a Union between the Two Nations into one Legislative Body and Civil Government, hath given great advantages to our Late Princes of treating us with a Rigour and Lofsiness, that our Ancestors were not accustomed unto: And though a small Acquaintance with the Politicks might have instructed the *English*, that whatsoever received a first Impression amongst us, would sooner or later obtain a second Edition amongst them; yet they seem'd either not to have foreseen, or at least not to have resented it, until the Original of King *Jame's* Absolute Power in *Scotland* (which all Men were bound to obey without reserve)

reserve) was copied over in *England*, in his Claim of Sovereignty, in dispensing with those Laws, that were the Fence about their Safety. It was from the unconcernedness, which the *English* have too often testified; not to say the countenance they have given, in Relation to the Usurpation of our late Kings over the Laws and Liberties of *Scotland*, that those Princes have despised the Applications made unto them, as well by Parliaments, as by the Nobility and Gentry, for redressing, their Grievances; and that the Nation remained so long discouraged from relieving it self in those Methods that were left it. And as the *Scots* did for many Years sadly feel and experience, into what Excess their Kings grew up in Usurping upon their Laws and Liberties; from a hope and confidence of being justified and supported in those Invasions by the Strength and Treasure of *England*: So the *English* cannot be altogether insensible, how *Charles* the Second not only confronted their Bill of Exclusion in *England*, with an Act in *Scotland* for the Hereditary Succession of his Brother, but what large Breaches he was encouraged to make upon their Rights and Priviledges, after his having obtained an Assistance of 22000 Men, to be enacted and granted unto him by Law in *Scotland*, and those to be used in what places and upon what occasions he should please to employ them. Nor are we able sufficiently to express our Obligations to His Present Majesty, who being extremely sensible, that our remaining disunited in our Governments, and two distinct Monarchies, though link'd together under one Monarch, hath been one of the great Occasions and chief Sources of our common Miseries and Oppressions; and being desirous both to redeem us from the illegal Sufferings we have already felt, and to obviate those which might break in upon us under future Reigns, hath therefore invited the Nations to such an Union of strength, Councils and Legislative Authority, as may render them a Defence to each other; and not Instruments and Tools of enslaving one another, and a mutual Prey. Which as all wise and good Men do earnestly long for, so the common Interest of the two Nations obliges them speedily to endeavour.

But

But we are forced to add, that besides the Encouragement which our late Princes have assumed unto themselves, of Usurping upon the Rights and Liberties of *Scotland*, from an expectation of being supported in it by the Power and Wealth of *England*; There is another Cause, unto which much of their Invasion upon the *Scot's* Priviledges is to be ascribed, and unto which we are forced to resolve many of our Miseries, as the Spring whence they have flowed. For upon the Succession of our Kings to the Crown of *England*, and their fixing their Royal Abode and Regal Seat in that Kingdom; they are thereupon fallen into a Method of deriving their knowledge of *Scotish* Laws and Customs, of being informed of the Grievances of that Nation, and of receiving Impressions of Persons and Things from one or two Ministers chosen to reside about them, and in order thereunto advanced into Places of Honour and Trust; and who too often have been found to want either the Honesty, Wisdom, or Courage requisite in those upon whom so much comes to be devolved. Surely the World hath had sufficient Evidence in the Ministry of the late Duke *Lauderdale*, what Mischiefs a Person in his Post about the King may be instrumental in bringing upon the Kingdom of *Scotland*: For tho he was endowed with too much Wit and Courage, to be either hector'd or wheedl'd, to be any Man's Tool and Property; yet through lack of Probity on the one hand, and excess of Ambition on the other, he was easily prevail'd upon to become an Instrument of ruining and enslaving his Country. What may *Scotland* then dread, if a Person should be honoured with the Character and Trust of Secretary for that Kingdom, in whom all the Qualifications for so considerable a Station, were the sighing decently, the entertaining one with a grave Nod, or if you please, a Grimace instead of a solid Reason; the making those whom he judgeth Court-Favourites, his unerring Oracles; and learning the Customs, Rights and Laws of his Nation, from them that never did, nor were obliged to know them; the recommending those to be Privy-Councillors to the King, who withstood his being so; the favouring

vouring those in obtaining the Office of prosecuting N-
cents, who stand accused for endeavouring to stubborn
Witnesses for destroying the Innocent ; and, as an Addition
to all those Accomplishments, should be so swallowed
up in the immoderate Love of the World, that instead of
having his Thoughts exercised about the Service, Grandeur,
and Safety of his Master, should be wholly employ'd how
to ingross the considerable Places of the Kingdom, for in-
riching his Family. Into what Inconveniences may the
best Prince be easily drawn, if his Secretary be unable to
advise him what he may legally do, and what he may not ?
With what Facility is a weak and easy Person in that
Post, misled by an English Minister of State, who has a
mind to be revenged upon *Scotland* for rejecting Episco-
pacy ? How may a Crafty and Treacherous Courtier, that
hath a purpose to play an after-game for the late King,
influence a Scots Secretary, unskilled in the Politicks, to im-
broil his present Majesty with his People in *Scotland* ; and
all for this, that the Abdicated Monarch may have a new
Throw for his Crowns again ? Suppose but one Person
in Office about the King for the Affairs of *Scotland*, and
him to be extremely timorous, What fatal Councils, under
the fear of the Whip, may he be prevail'd upon to suggest
and give ? Hence it is evident what Disadvantages those
of that Nation lie under, of having both their Persons
and Actions misrepresented, and their Rights and Liber-
ties undermined and invaded ; and that as well by reason
of the King's residing constantly at so great a distance
from them, as because of his having no more Counsellors
usually about him, in reference to their Affairs, than who
(as a French King was pleas'd to express it) may all ride
upon one Horse.

Now as it was the Oppression and Slavery under which
we had been brought, that rendred His Majesties Under-
taking in coming into these Kingdoms with an armed
Force, in order to redeem them, both honourable and
just : So it was the hope of being delivered by him from
Misery and Bondage, that encouraged us first to invite,
and then to co-operate with him in the Prosecution and
Accomplishment of his glorious Design. It was the In-
vasions upon our Laws that we complained of, and from
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which we desired and endeavoured to be relieved; nor had we any Quarrel with the late King's Counsellors, save as they were Advisers unto, and Instruments of overthrowing them. So that if what the Parliament of *Scotland* desires to have redressed, be not something wherein their Laws have been invaded, and their Rights violated, they are to blame for insisting upon it as a Claim of Right; and should rather crave it as an Act of Grace, if they find the want of it prejudicial to the Nation. But if what is required do either appear to have been wrested from the Nation, or that through their not obtaining it, they will be upon all occasions obnoxious to be oppressed and intralld, we may then assure our selves, that His Majesty is too just, as well as good, to deny them. For as His Majesty doth generously acknowledg in his Declaration emitted at the *Hague*, for the restoring of the Laws and Liberties of the Kingdom of *Scotland*, " That they
 " who are concerned in the Laws, Liberties and Customs
 " established by Lawful Authority in a Nation, are indispen-
 " sibly bound to endeavour to preserve and maintain the said Laws, Liberties, and Customs; so he doth
 " in the same Declaration, sacredly promise, that upon
 " being prosper'd in what he was then undertaking, he
 " will not only free that Kingdom from all hazard of
 " Popery and Arbitrary Power for the future, and deliver it from what at that time did expose it to both,
 " but settle it by Parliament upon such a solid Basis, as to
 " its Religious and Civil Concerns, as should most effectually redress all the Grievances under which it had
 " groaned. And therefore as we are not to imagine, that a Parliament, which in the whole course of its Proceedings hath testified so much Love, Loyalty and Zeal for His Majesty, both in advancing Him unto, and maintaining Him in the Throne, will abridg and lessen any of the just and legal Prerogatives of His Crown; or challenge any Priviledg, Right or Immunity, which their Ancestors have not been possessed of under the best and most Glorious as well as Ancient Reigns; so it were unpardonable to think, that a Prince of so much Wisdom, Goodness, Honour, Justice and Truth, as His Majesty is known to be, should either insist upon the detaining from His People, what,

what some of his Predecessors have by Fraud and Violence ravished from them; or should so far depart from His Princely and Sacred Word, as to frustrate the Expectations of His Leiges of having those Grievances redressed, which His Parliament have condescended upon as necessary to be remedied.

But as His Majesties delaying to gratify the desires of His People, is not the effect of Choice and Inclination, but the result of a Force put upon him through the sinistrous Representations given him of their Demands, both as illegal, and as incroachments upon the Royal Authority: So we do not wonder that the same Person should misreport the Actions of a Parliament, and insinuate into his Master unjust and false glosses of their Votes, who hath had both the Impudence and Treachery to endeavour to Possess the King with Disloyal Characters of his most dutiful, best and useful Subjects. And seeing his Capacity both as a Lawyer, and His Majesties Advocate, hath not served to instruct him of the danger, nor to restrain him from Leasing-making (which is Treason by the Law of *Scotland*) it is to be hop'd that the Persons whom he hath criminally slandered, will have the courage to Impeach him; and that the Parliament will have the Justice to condemn him to the Punishment that the Law adjudgeth him unto. Nor can it be matter of Astonishment to any, to find a Person imposing upon His Majesty in reference to the Laws, Rights, and Customs of His Country, who has had the Impudence as well as Malice, to brand those for Republicans, by whose Power, Zeal, and Interest, the Crown came to be conferr'd upon the present King. But they must be Persons of a very short Prospect, who do not perceive, that they who are endeavouring to restore King *James*, account it expedient to blast those in his present Majesties Esteem, under the reproachful name of Republicans, who have the Loyalty and Courage to venture their whole for his Crown and Dignity, and to withstand those ill Men in what they are about. And I will venture to say it freely, that as it is not Names, but Things which wise Men seek and pursue: So there is no more required to the freeing both *Scotland* and *Eng-*

land from the Common-wealths Men, and from all Republican Principles, but that His Majesty persevere in preferring unto his People their Rights and Liberties; Esteem Parliaments as well his great Council in Arduous Affairs, as the Suppliers of him in his Necessities with Money; and that he make the known Laws the Measure and Standard of his Government. While on the contrary it is in the Power of ill Ministers (if His Majesty hearken unto them) to withdraw nine parts of ten of the People in six Months from their Love of Monarchy, and to force them upon wishing for a Common-Wealth. And had it not been for the view which the Nations under the last Reign had of their Royal Highnesses the Prince and Princess of *Orange*, and the assurance they entertained of enjoying their Laws and Priviledges, under their Government and Authority, the Methods which the late King took, and the Counsels he followed, would instead of the Translation of the Crown to Their present Majesties, have put an end to the Monarchy. Nor can any thing so affright considering Persons from addictions to Monarchy, as the leaving the Nations under the Power, Conduct and Authority, of those very Men, by whose Counsels and Management the late King came to forfeit His Crown; seeing some will be so peremptory as to imagine, that it cannot be upon personal liking that they come to be used, but because the nature of the Government requires them, or at least Persons of their Principle, and Political Complexions.

But forasmuch as the present Embarrass of His Majesty with his Parliament of *Scotland* is wholly caused by the Advocate's abusing His Majesty in the Account he hath given him, both of the Rights and Jurisdictions of the Estates in Parliament Assembled, and of the Laws and Customs of the Kingdom; I shall therefore in Order to the disparaging of him, with all the Wise and Loyal part of Mankind, and the debarring him the King's Ear, and attracting upon him the Royal Indignation; Publish the Principle upon which he builds all the Advices he communicateth to his Master, and with which he seeks to poison and corrupt His Royal Mind. And this is, That the King hath a separate Interest from his People, which he ought

pursue in distinction from theirs: And this we may be
 sure he doth not fail of insinuating, either immediately
 unto his Majesty, or at least to those about him; seeing
 he had the Folly, as well as the Impudence, both to
 assert and to seek to justify it in open and full Parlia-
 ment. Now whosoever gives himself the trouble of
 examining the tendency of this Principle, will find the
 natural Consequences of it to be, That the Prince and
 People must not only Live in a constant jealousy and
 dread of one another; but must always be imbarke'd in
 an intestine War. Nor is it to be avoided, unless either
 by the King's arriving at the height of Tyranny, and
 the Peoples sinking into the Abyss of Slavery, or by
 the Subjects grasping the whole Power and Authority,
 and leaving unto the King an empty Name. Yea, it is
 a destroying of the very end for which Government
 was ordained of God, and submitted unto by Men; see-
 ing that was nothing else, but that the whole Society,
 comprehending Ruler and Ruled, might have but one
 Common Political Interest; for the Defence and Security
 whereof each of them were to have their respective Du-
 ties allotted unto them: "Nay, the very Prerogative
 "acknowledged to belong unto the King, is nothing save
 "a Power trusted with him, in Relation to some Cases
 "that may emerge, by which he may be the better ena-
 "bled to preserve the safety of the Community, and to
 "provide for the benefit of the Publick. Nor could Sir
 J. — D. — le take a more effectual Course to supplant
 the King in the Hearts of his People, and to possess them
 with a Horror of, and an Alienation from his Government,
 than by his Proclaiming within the Parliament Walls,
 That the King hath a separate Interest from that of his
 People, and by Consequence that he is to promote and
 maintain it, with the Neglect if not the Ruine of theirs;
 neither is there any thing more propable than that the
 Advocate vented it in Treachery to his Majesty, whom
 out of a Love to the late King, and a Desire to have
 him restored, he seeks to undermine and betray. For
 he hath hereby so alarm'd the People in reference to
 His Majesties Government, and fill'd them with those dis-
 mal Apprehensions of what they are to expect, in case
 the King have a separate Interest from Theirs, that it
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will be difficult either to allay their Fears, or to recover them to an intire Trust in his Majesties Justice and Goodness, without removing that Man both from about his Majesties Person, and out of his Councils, who hath given them that frightful Idea of his ensuing Reign.

However from this of the Advocate, as well as from innnumerable Observations to be made from the present Behaviour and Conduct of those who are received into his Majesties Councils and Service ; after they had not only ministered to King *James* through the whole Course of his Reign, but co-operated with him in most, if not all the Methods of his Tyranny ; we may rationally venture at this Reflection, (to wit) That they are either endeavouring to justify the former Reign, by seeking to expose and disgrace this, Or that they are studying to cover themselves from what they are obnoxious unto, for their Crimes under the last Government, by reacting and repeating the same under the Connivance and Indulgence of the present.

And as by the First, they evidently shake his Majesties Throne ; so by the Second, they not only ~~abate~~ the Mercy of the Government, but despise its Justice. : By the Last, they render the Government Vile and Cheap ; and by the former they pursue its Subversion : It must with all lay a great Prejudice upon the Opinion of those that dissuade his Majesty from gratifying his People in these Demands, about which so much noise has been made here, as well as there, that they were judged necessary for his Interest as well as the Kingdoms Safety, by, in a manner, the Unanimous Vote of the whole Parliament ; and of which it may be modestly said, that it is not only one of the wisest, but constituted of the most considerable Persons for Quality, Estate, and Esteem in their Country, that ever *Scotland* had : For even the Vote about the Lords of the Session, which is most censured and stumbled at, pass'd the whole House without any more dissenting Voices than barely four ; and of those Sir *J. D——ple*, who was the leading Man amongst them, sensibly biased by the Consideration, that, if the Vote obtained, his Father would have been excluded from the Honourable, and to him Beneficial Place of President, to which he is now advanced. Is it not more likely that these few should
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act without regard to the King and Kingdom's Interest, and depart from the Laws, Rights and Customs of the Realm, than that the whole Body of the Parliament should be unacquainted with what the Constitution, as well as the common Safety of Prince and People, authorize them to claim? And that they should exceed the measures of Law, Justice, and Equity, in what they demand? Nor was the Parliament under the Influence of such Motives for encroaching upon the King's Prerogative, as these Gentlemen were for betraying both the Jurisdiction of Parliament, and the Privileges of the Nation. For having sacrificed all the Laws and Rights of the Kingdom, under the late Reign, to the Lust and Will of one Arbitrary and Despotical Monarch; they could do no less, both by the Rules of Policy and Uniformity, than endeavour to vest his present Majesty in the Robberies of former Princes; there being no such way for Thieves to escape at the Bar, as to prevail with the Judge to receive and harbour their stolen Goods. And for the King to rely upon being informed by Sir J. D——ple, what is the Prerogative of the Crown? and what are Rights and Jurisdictions of Parliament? is as if King James's Attorney-General were to be made the Oracle of the Court, in reference to what Crimes and Offences Peers and Gentlemen were to be condemned and executed for; and for what Failures and Miscarriages Cities and Corporations were to Forefault their Charters, and to be deprived of their Franchises. Could the Parliament have been guilty of so Impudent, as well as Criminal a Thing, as to incroach upon the just Prerogatives of the Crown, and to rob his Majesty of his legal Rights, it would have been more for their Profit and Interest to have effectuated it in relation to the disposal of Offices of State, and of Military Commands, than to claim merely a right of interposing; and that only in the Case of a total Vacancy of the Session, about the approving of Persons nominated by His Majesty to judicial Places. For whereas the former would look like the putting themselves into a condition of giving check to their Prince, whenever a *Capricio* should take them, and they should fancy themselves agrieved; all that can be aimed at, or possibly compassed by the latter, is to have Justice equally administered according to the known Laws, which is no less his Majesty's Interest than his Duty; to make wise and careful Provision for.

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In a word, it would seem to command as well as to bespeak belief that a whole Parliament, who in all other Proceedings, have acted with the highest Prudence, Temperance and Justice; and where there are so many Persons of Vertue, Honour, Probity, and Knowledge of the Laws and Customs of the Nation, should be more regardful of voting justly, and challenging nothing but their legal Rights, than that only *four* Men should be found insisting upon what is Right; and they, such as most of them, have been Tools and Instruments in the Breaches made upon the Rights and Liberties of the Nation.

And as the whole Blame is to be intirely lodged upon a few Ministers about his Majesty, both as to the delay that hath been given to redress any of the Scots Grievances, and as to the disputing of the Equity and Justice of actually relieving them from some; so besides the Confidence that all Good Men are possessed with, from the Consideration of his Majesty's Wisdom and Goodness, that all will be at last accommodated to the King's Honour, and the Peoples universal Satisfaction; the Concessions his Majesty hath lately granted, with reference to the Articles, even against the Opinion of his Ministers, is as an Earnest and Pledg what his People may expect in reference to the rest, if it can be made appear, that what is further insisted upon, and humbly desired of him, is the relieving of his Subjects, and not the robbing of himself; the being kind to his People, and not unjust to the Crown; and the exercising Mercy to all, without being cruel and unrighteous to any. So that we are become obliged, in point of Duty to his Majesty, before whom our Demands and Claims lie, and from the Respect we owe to the English Nation, among whom these Matters are both publicly discoursed, and differently represented and censured: And finally, by the Justice we account due to the Parliament of *Scotland*, whose Moderation is not only questioned by reason of their Demands, but also their Loyalty: I say, we are become obliged, by all these Motives and Inducements, to enter into a detail of the several Particulars in Controversy, between some of his Majesty's Ministers, and the Parliament of *Scotland*; and not only to state with what distinctness we are able, the several heads subjected to debate, but to give all that support & enforcement from Reason,

Reason, Law and Custom, to the Expediency, as well as Equity of them, that we judg to be requisite; and that we can dispatch in the narrow room which we have confined our selves unto.

In pursuance of which undertaking, We will begin with the Vote to which the Royal Assent is not given; that referreth to the disabling and precluding Persons from publick Trusts and Imployments. And this we the rather do, both because we can discharge our Hands the soonest of it, and because it is the most censured by some of the *English*, from an apprehension that what of this Nature passeth into an Act at *Edinburgh*, may be drawn into President at *Westminster*. But that every one may judge of it, and what shall be offered in the Vindication of the Necessity and Justice thereof, I shall present the Reader with a Transcript of the Vote: *The King and Queens Majesties considering that the Estates of this Kingdom, have by their Vote, declared their Sense and Opinion, That such as have in the former Evil Government been grievous to the Nation, or have shewed Disaffection to the happy Change, by the Blessing of God now brought about, or have been Retarders and Obstruckers of the good Designs of the said Estates in their Meeting, are not fit to be imploy'd in the Management of the Affairs of this Kingdom; Do with Advice and Consent of the Estates of Parliament now Assembled, Statute and Ordain, That no Person of whatsoever Rank or Degree, who in the former Evil Government have been grievous to the Nation, by Acting in the Incroachments, mentioned in the Articles of the Claim of Right, which are declared to be contrary to Law, or who have shewed Disaffection to the happy Change, by the Blessing of God now brought about, by acting in Opposition therunto, since the time that the King and Queen now Reigning were Proclaimed, or who hath been a Retarder or Obstruckter of the good Designs of the said Estates; viz. The securing the Protestant Religion, the setting the Crown; the establishing the Rights of the Leiges, and the redressing their Grievances, by Acting contrary to these good Designs, since the time that they*
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became

became publick by Votes, and Acts of the Meeting, be allowed to possess, or be admitted into any Publick Trust, Place, or Employment, under Their Majesties in this Kingdom.

I suppose the Reader by this time surprized at the unreasonableness of the Age we live in, that there should be Men found so void of Sense and Understanding, as to spy out any thing here, that deserves to be clamour'd against, or which is worthy to be complain'd of: Every Line breathes of that Lenity and Moderation, that it savours rather of a defect of Justice, than of any excess of it; and the utmost hereby designed, is only a disabling a few wicked Men from ruining us for the future, and not a punishing of them for what they have done; for as there are none excepted as to Life, so the few designed to be debarred from Offices, are described and charactered after such a manner, that the very employing them will Dishonour His Majesty, and Disgrace his Government. There is no abridging His Majesties Mercy, only an endeavour to maintain the Justice of his Undertaking in coming to Deliver us. For having charged the late King's Evil Counsellors, and them only, with the Crimes upon which he grounded both the Righteousness and the Necessity of his Expedition: Whosoever is so villanous as to advise him to use them, can design no less than deriving an Aspersion upon his Wisdom, Justice and Sincerity. And if the Nations be not delivered from those against whom he declared, how shall we be able to answer his Enemies, who accuse his coming hither, to have been upon another Motive? For what his Friends affirm to have been bestowed upon him as the Reward only of his Expedition, and of the Deliverance he wrought out for us; his Adversaries will be encouraged both to believe and say, was the Principal, if not sole end of it: Nor is it merely needful in order to the Vindication of His Majesties glorious Undertaking in coming into *Brittain*, That they who were the Instruments of our Slavery and Oppression under the former Government, should be precluded from all share of the

the Administration under this ; but it is also necessary for the reconciling the Love and Obedience of the People to His Majesties Person and Authority: Courtiers may fancy, that if one be able, he is qualified, without other Ingredients, to be a Minister of State: But the most part of Mankind do always look for some degrees of Honesty in those advanced into the chief Offices in the Government. Nor will People easily believe, that they who betrayed their Laws, Rights and Priviledges, under one Reign, will ever Administer Justice equally, or defend them in their Properties under another. Men may have present ease, but they will be always in fear whilst they remain in the hands of their old Oppressors. It is impossible to keep up in the minds of the Vulgar; honourable Thoughts of King *William's* Government, if he will chuse to work with King *James's* Tools. Whosoever Counsels His Majesty to employ those that were the Instruments of the former Tyranny, must intend to bring him under a Suspicion, both of approving that, and of designing the like. No man envieth his Majesties pardoning the worst of his and the Kingdoms Enemies; but we cannot avoid pitying him, and bewailing our selves, that he is persuaded to use them; yea the Royal forgiveness ought to confine it self to limits; and much more should a Prince set Bounds to himself in the Honours and Preferments which he is pleased to bestow. Now having mentioned his Majesties Grace, I'll venture to say, That after all the Mercy he hath exercised towards his own and his Peoples Enemies, there is not one either Converted to his Interest by it, or that reckons himself obliged to him for it. But instead of attributing their impunity to His Majesties Grace, they ascribe it to the Pusillanimity of the Government; and in the room of being brought over to serve him, they are emboldened to go on in their Conspiracies against His Person and Dignity. Nor will they ever account themselves indebted to his Mercy, till he hath made some of them the Objects of his Justice. But to return to what I am upon; should not such an easy Animad-

version be inflicted upon those who have oppressed us, as the being shut out from Trusts and Impleys in the Government, We should both tempt them and others to repeat the same Crimes upon the first opportunity that is offer'd unto them. Yea, if instead of falling under such a gentle Mortification, they should be preferred to the chief places of Honour and Profit in the Kingdom, Villainy will be committed in order to Merit; and Men of brutal and Profligate Principles, will seek to exceed in Unjustice and Treachery, that they may be thought to excel in Desert. And though through the Moderation, Goodness, Wisdom and Justice of Their Majesties, we may escape the Consequences of such a Method during Their Reign, (which I pray God may be long) yet Posterity will lose most of the benefit of this Revolution, for want of adjudging those to punishment, that have been Traytors to Societies, and Cannibals to Mankind in this Age, whereby to deter others from being such in the next. The Counsel given to Princes by the Supream Sovereign by whom they Reign, is, That they should punish exorbitant Offenders, to instruct others to fear and forbear doing wickedly: But the Advice thrust upon His Majesty by some ill Men about him, is, That he should cherish and advance them without regard to the effects that may attend it. What a strange *Idea* will it give the World of our Government, if the rewards of Vertue be made the recompences of Crimes? And how shall we lift up our Faces to God or Men, if the Malefactors under the last Reign, not only escape under this without Chastisements, but inherit the Preferments and Emoluments of it. If what I have said be not sufficient to justify both the expediency and equity of the forementioned Vote, I hope the Experience the King hath had of that sort of People, since he received them into his particular Favour, and Principal Service, will reconcile him unto a better Opinion of it, and shew him the necessity of turning those out of Office whom his Parliament would have prevented his taking in. Both the Nations are sensible.

sible of His Majesties being betray'd, both in his Councils, and in his Affairs; and it is very easy to guess by whom it is done. For none so likely to undermine his Throne, as they who endeavoured to hinder and obstruct his Ascending to it: Nor can any Man be Traytors to this King, but they who were the Instruments of the last King's Tyranny. The Cobler's Au's and Ends are unsuitable Furniture in the Painter's Shop. Neither will they ever serve this King with faithfulness in his vindicating the Kingdoms into Liberty, who were the Sworn Vassals to his Predecessors Despotical Will, and his Tools for oppressing and enslaving the Nations. Besides the damage they have brought upon the Nations, and the Treasure they have unprofitably wasted, They have been the Occasion of losing His Majesty more Honour in one Year, than all his Foreign Campaigns ever did since he first Commanded Armies, and presided in Councils; and should he be prevailed upon by the Adulation and Artifice of any about him to trust the Conduct and Management of his Affairs in the same Hands for one other Year, it may be easily foretold, without Consulting the Stars, that we shall not be in a Condition on the third to save either him or our selves. And as we have no distinct Interest from His Majesties, so all we desire is, That he would vigorously Espouse and Assert his own, upon which we shall both believe and Proclaim our selves happy. For the Vipers durst not hiss but for the warmth they receive through being lodg'd in his Bosom. But to conclude this head; I am extreamly mistaken, if they who have occasioned and promoted the Quarrelling at the forementioned Vote, do not find that they have consulted worse for themselves, than was designed or intended by those who they account for their Enemies For this Parliament will undoubtedly at their next Assembling, be so far from departing from what they have Voted, that instead of acquiescing there, and being contented with the having the betrayers of their Laws, the Oppressors and Murderers of the Leiges, and the Obstructors of the King and Kingdoms Establishment, only,

only debarr'd and excluded from Places of Preferments, Profit and Trust in the Government ; that they will be justly provoked, and see it to be indispensibly necessary to Impeach and Proceed capitally against some of them. Their despising as well as refusing of Lenity, will derive upon them the severities their Crimes at first deserved, but which that Prudent, Temperate, and Indulgent Senate, were willing to have mitigated by exchange of them into milder. And as we are fully assured, that so wise and good a Prince as His Majesty, can never entertain either mean or distrustful thoughts of a Parliament, that hath given him so many and eminent Testimonies of their Loyalty, much less be prevailed upon to Dissolve them, while the Nation is in so Distressed and Unsettled a Condition ; an Armed Enemy in its Bowels, and the ferment every where so high, that nothing can allay it, but their being continued, and being allowed to meet at the appointed day to which they are Adjourned ; so we are no less assured, that they who are said to be the Zealots in this Parliament, and to have the chief Conduct of, and the prevailing sway in all Business and Affairs that come before it, can neither miss being chosen into, nor have less Interest and Esteem in another. So long as Persons of Fortune, Quality, and Interest, continue to assert the Laws and Rights of their Countrey, and to pursue the joint Interest of the King and Kingdom ; the Oblivions cast upon them by such as dread and dislike their Courage and Integrity, will only increase their Reputation, and Oblige all those Senators and Members of Parliament, that are honest, to put the more value upon them. But to Superfede all fear of this Parliaments being Dissolved, without both Assembling, and Dispatching business, the King by a Law, to which the Royal Assent was given the last Session, abridged himself of all Power in that Matter. For in the Act that past the first of July, whereby Prelacy and the Superiority of any Office in the Church above Presbyters, is abolished, it is declared, *That the King and Queen's Majesties, with the Advice*

vice and Consent of the Estates of this Parliament, will settle by Law, that Church-Government in the Kingdom, which is most agreeable to the Inclinations of the People. So that who-soever shall have the Impudence to advise His Majesty to Dissolve this Parliament, before there be by Law some Government erected in the Church, Doth both tempt him to violate his Faith, and to trample upon one Express Statute, to which himself hath given the Royal Assent.

The next contested Vote that we are to Address ourselves unto, and whereof we are to demonstrate the Legality, Reasonableness, and Necessity, is that which relates unto the Privilege of the Estates of Parliament, in nominating and appointing Committees, of which I do here subjoin an Authentick Copy. Forasmuch as the meeting of the Estates of this Kingdom, did by their Vote of the Eleventh of April last, represent among other Grievances, That the Committee of Parliament called the Articles, is a great Grievance to the Nation, and that there ought to be no Committees of Parliament, but such as are freely Chosen by the Estates, to prepare Motions and Overtures that are first Tabled in the House: Therefore Their Majesties with the Advice and Consent of the Estates of Parliament, do Enact and Declare, That it is the undoubted Privilege of the Three Estates of Parliament, to Nominate and Appoint Committees of Parliament of what Number of Members they please, being equal of every Estate, and Chosen by the respective Estates; viz. the Noblemen by the Estate of the Noblemen, the Barons by the Estate of the Barons; and the Burroughs by the Estate of the Burroughs, for preparing Motions and Overtures that are first made in the House, or that the House may Treat, Vote, and Conclude upon matters brought in plain Parliament, without remitting them to any Committee, if they think fit: Or that the House may appoint Plurality of Committees for any Motions or Overtures that need to be prepared or digested for them: Declaring hereby, That no Officers of State are to be Members, except they be Chosen. And hereby rescinds the first Act of the Third Session of the first Parliament of King Charles the Second, and all other Laws and

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Customs, establishing the manner of Election, and Power of any Committees of Parliament, in so far as they are not conform to this Act. So sensible was the Meeting of the Estates, that the Committee of Articles was according to late Custom, Regulation, and Practice, an intolerable Grievance to the Kingdom, and a high Inroachment upon the Liberty and Jurisdiction of Parliament; that before the disposal of the Crown to Their present Majesties, they made their being relieved from it, one of the Stipulations, and an Article of Contract, upon which Their Majesties had the Crown conferred upon them, and upon which the People agreed to yield them Obedience and Subjection. For among several things which they covenanted as well as provided, for the redressing of, when in the Name both of themselves, and of the whole People of Scotland, whom they represented, they yielded up, and conveyed over the Crown of that Kingdom to *William and Mary*: This was the first Grievance that they mentioned, and made it a matter of Bargain and Compact, as well as of Petition and Desire to be eased from it. The words that were proposed and read to Their Majesties in the Banqueting-House, upon that Solemn Occasion of presenting Them with the Instrument of Government, are as followeth. *The Estates of the Kingdom of Scotland do represent, That the Committee of Parliament, called the Articles, is a great Grievance to the Nation, and that there ought to be no Committees of Parliament, but such as are freely chosen by the Estates to prepare Motions and Overtures that are first made in the House.* What ill Men must they now be, that durst advise a Prince of that Honour, Veracity, and inviolable Faith, as His Majesty is universally known and acknowledged to be, to delay or clog the satisfying of His People in the foregoing particular: Seeing the meer procrastinating and adjourning the giving them contentment in it, hath a visible and natural tendency, if possible, to the weakening their Faith and Confidence both in his Truth and Goodness. It would appear, that some have a mind to make their Master seem faithless,

to justify their being truly such themselves: Or else they have a design to vindicate King *James's* breach of all Stipulations and Promises, by persuading King *William* to do the same. Or, which is extreme likely, they would by His present Majesty's departure from that seeming Compact, upon which he received the Crown, reflect folly and injustice upon the Parliaments Deposing the Late King, for his violating the Original Contract.

But that we may discourse intelligibly of that Committee called the Articles, it will be needful to give some brief account both of what it originally was, and what by degrees it grew up, or rather degenerated into, till it became at last an insupportable Grievance to the Nation, and rendred Parliaments either wholly useless, or mere Instruments for pursuing and executing the King's Will. Now by what appeareth either from our History, Records or Statute-Books, there was no such thing anciently as a Committee, or Lords of Articles, but every thing was as well originally moved as debated and concluded in full Parliament. For the first mention we meet with in our Records, of Lords of the Articles, is in the Year 1466. Under the Reign of King *James* the Third: Where we find, that upon the Convention of the Estates of Parliament, they not only chose so many from among themselves, to be Judges in Civil and Criminal Causes, who are styled *Domini ad querelas*, there being then no Judicial Court, save what the Parliament constituted from time to time out of their own Body: But that they also elected three Persons for the Clergy, three for the Barons, and three for the Burgesses, to consider of, and prepare matters fit and needful for the House to bring into debate, and to come to Votes and Resolutions about. By which it seems that this Committee of the Articles had no auspicious beginning, having its rise under one of the worst of all our Kings, and who came to the most unhappy and unfortunate end: However there appears no such thing here, as that the Officers of State were to be supernumerary to those chosen by the Parliament; or that the King, either

by himself, or by one representing him, chose any of them; but it is evident from the Record, that they were wholly and entirely elected by the States themselves in Parliament assembled. And though the being an Officer of State, was never esteemed a ground disabling and incapacitating a Person from being a Member of the Committee of Articles; yet upon a perusal of the Records, I do not find that any Officers of State made a part of the Lords of the Articles, until the year 1567. and their being then of that number was not *ratione Officii*, but by reason of the Parliament's having elected them into that Station. For whosoever consults the Records of Parliament of the years, 1467. 1475. 1524. 1526. 1528. 1537. 1542. 1543. will find that the Officers of State were so far from being supernumerary in the Committees of the Articles, that they were not so much as elected into that Trust, nor had any room or place allowed them there; though it appears by the Records of all those Parliaments, that there were Members chosen by, and out of the respective Estates, sometimes in larger, and sometimes in lesser numbers to make up and constitute such Committees. Yea, I cannot but add, That our not meeting with any mention of the Lords of Articles of the Parliaments Assembled, and held 1469. 1471. 1474. 1481. 1483. 1488. 1489. 1491. 1493. 1505. 1515. 1522. 1535. 1540. 1546. 1551. is an undoubted Evidence, that the having Committees of the Articles was not a thing of indispensable necessity, or to which Parliaments were legally obliged; but that it was a matter of Arbitrary Pleasure, and that they were chosen or omitted, as the House thought to be most useful and convenient for the management and dispatch of their Affairs. And though it cannot be denied, but that after the year 1567. some of the Officers of State were now and then thought worthy by reason of their moral and intellectual abilities, to be chosen among others for Lords of the Articles, as in the Parliaments held in the years 1581. and 1593. yet it is most evident, that they were not elected into that Committee by virtue and reason of their Offices, much less sat there as supernu-

pernumery to those chosen by the Estates; forasmuch as in other Parliaments, particularly in those held in the years 1587. 1592. and 1594. there is no intelligence, report or remembrance of them, in the Registers and Lists of those of whom the forementioned Committees were made up and constituted. And that which puts it beyond all possibility of being controuled (save either by ignorant, or by impudent and self-condemned Men) that no Officers of State had right anciently to be of the Committee of Articles, unless previously chosen by the Estates of Parliament, is the 37. Act of Parl. 11. of *James the Sixth*: Where Provision being made by Law about the number whereof that Committee should be constituted; It is, without the least mention or suggestion of those Officers of State, enacted and ordained, *that the number of the Lords of Articles be equal in each Estate, and that the fewest number of every Estate be Six, and the greatest number Ten.* Yea so far were those, styled Lords of Articles, from having originally the sole power of preparing matters, and of bringing in Motions and Overtures, to be considered and debated in Parliament, exclusive of other Members of the House, who were not of that Committee; that both at first, and for a long tract of time afterwards, they were not so much as a Committee of Articles of, and to that Parliament by which they were chosen, and of which they were Sitting and actual Members; but were only so in reference to the next Parliament that should succeed; against whose meeting they were to prepare such things as they should judge to be most fit and expedient to be then taken into consideration; but still with a right as well as with a liberty reserved to that future Parliament, not only to receive or reject what should be thus matured and offered unto them; but to admit whatsoever Overtures they pleased, that should be made unto any of the Members of their own House. It was the Ancient Custom and Practice of *Scotland*, that the Sitting Parliament antecedently to its Dissolution and Separating, elected so many from among themselves, who were in the interval betwixt that and the next Parliament, to make inquiry into

the necessities of the Lieges, and into the State of the Kingdom; and accordingly to draw up and prepare such Overtures, as should carry that relief and remedy in them, which might give a redress unto Grievances, be a means of preserving the Nation in safety, and of promoting the prosperity of the Subjects. Now from this harmless beginning of the Committee of Articles, it hath, through the Usurpation of our Kings, especially after their Succession to the Crown of *England*, and the remove of their Royal Abode thither, and through the officiousness of publick Ministers to the Prince, and treachery to their Countrey, grown up at last to that exorbitancy, that it is not only become burthenfome, but intolerable. For by reason of the Parliaments coming at last to commit the inspection into all Affairs, and preparing all remedies unto Grievances, into a few hands, and those to be unchangeable during a whole Session; Our Late Monarchs obtained such a handle whereby they might incroach upon the Jurisdiction of Parliaments, and the Liberties of the People, that they soon improv'd it to the eluding of all the good that the Kingdom was to expect from Parliaments, and to the making those who were designed to be the means of our safety, become the Instruments of our Ruin. For the accomplishment whereof, and the more effectual rendring the Lords of Articles, Vassals unto the Monarch's Will, and Tools for executing his Pleasure, they first prevailed to have the Officers of State admitted into that Committee as Supernumeraries, and that, without being Nominated and Elected by the Estates in Parliament, they should have a right to sit there *Ratione Officii*, by vertue of the Employments they held in the Government. For King *James* the Sixth, being by the adulation of the *English* Bishops, brought intirely over to their Interest, as well as to their Opinions, about Church Discipline and Worship, and having a mind in requital to the Church of *Scotland*, for all the kindness they had expressed to him, both in his Infancy and riper years, to obtrude upon them the *English* Ceremonies, he did in order to the more easie effectuating of

of it, flatter, cajole, and bribe, as well as, huff, and awe the Parliament Anno 1621. to allow the Officers of State to Sit as Supernumeraries, without being chosen in the Committee of Articles. And thus he forced those Innovations, commonly known by the Name of the Five Articles of *Perth*, upon the poor Church of *Scotland*, having by those Supernumerary Officers, not only so moulded the Committee of Articles, as to pass and present them, but thereby laid the Foundation of their being ordained and enacted in the House. And to make the Lords of Articles yet more grievous and intollerable. King *Charles* the First. (whose invasions upon the Rights and Liberties of his People, proved Fatal both to him and them) overthrew the Ancient Method of their Elections, and brought the choice of them into such a Channel, as could issue in no less than Tyranny in the Sovereign, and Slavery in the Subjects. For whereas by Law and Custom, the Lords were to choose the Lords, and the Barons to choose the Barons, &c. *Charles* the First did in his Parliament held Anno 1633. when he was in the heighth of his Greatness, change and innovate this Method, and having divested the whole respective Estates, of choosing severally their respective Commissioners, he assumed a Power to himself, with a right of consigning it over to his Commissioner in Parliament, for choosing Eight Bishops, consigning to the said Eight Bishops, a Power of choosing Eight Noblemen, and restraining to the said Eight Noblemen, together with the aforesaid Eight Bishops, a Power of choosing Eight Barons, and Eight Burgesses; and that these in conjunction with the Officers of State as Supernumeraries, should be the whole and sole Lords of Articles, exclusive of all others. Finally, to render that Committee yet more insupportable, the sole Right as well as Liberty of bringing in Motions, of making overtures for redressing Wrongs; and of proposing means and expedients, either for the relief or the safety and benefit of the Subject, is intirely restrained unto, and lodged wholly in this Committee. Neither is it by our late Practice lawful for any Member or Members, that are not of that packt Club

Club and Society, to make the least proposal or motion, either for the repealing of an ill Law, or for the enacting of a good. So that I would now hope, that the meer representing of this Committee of Articles, as it is now transformed and degenerated from what it formerly was, is enough to justify the Vote of the present Parliament, about the having that grievance redressed, and to vindicate them from the Obloquie they have lain under, for insisting upon having Parliaments loosened from those Fetters. For where is the Liberty of Speech, and Voting, essential to a Legislative Body, if Parliaments must be thus muzzled? How is a Kingdom eluded out of all the good that they expect from any Parliament, if their Representatives may neither lay open their Sores, nor offer Plaisters in order to their Cure? How miserably would things have proceeded in the late Meeting of Estates, if nothing was to have been before them, but what a Committee, where Eight Scotch Bishops were to have the Electing of Eight Noblemen, and they together the chusing of the rest, with King *James's* Officers of State Supernumerary, that should have prepared Overtures for that Great and Illustrious Assembly? I dare say, That the being bound up to such a Method, would have more effectually secured the Throne to King *James*, than all the Swords of his Partizans. Nor can Parliaments be designed for any thing, under such a Constitution of a constant Committee, with the Officers of State [Supernumerary, but to enlarge the Prerogative of the Crown, and to levy Money from the People. But Blessed be God, His Majesty wants not Inclination to deliver his People from this, and from all other Grievances, but only wants Persons about him, to set them in that Light that he may discern them. Therefore we complain not of His Majesty for the delaying the Satisfaction that his People waited for; but we complain of those ill Men, who told him, That to part with the Lords of the Articles, was to throw away the brightest Jewel of his Crown. Whereas it appears from what hath been said, that there is nothing desired, whereby His Majesty's Legal

gal Prerogative can be diminished and lessened, but that all which is humbly craved, is the redeeming his Parliament and People from an ignominious and burthensom Yoke; and their being reliev'd from the Invasion and Usurpations made upon their Laws and Customs, by the Craft and Violence of some of their Monarchs. Nay, the very contending for the continuing the Officers of State as Supernumerary in their Committees, without the being Elected unto them by the Estates in Parliament, is both an Asperision upon the Wisdom of the Parliament, as if they knew not how to pay the respect and deference due to those Officers, till compell'd unto it; and a Reflection upon their Loyalty, as if no Persons could be tender or respectful of His Majesties Interest among the Committees of Parliament, unless received into the King's immediate Service, and brought under the Influence of Honours and Emoluments. But whosoever suggests this unto the King, must be one that is accustomed to draw other Mens Pictures by his own Original; and who by acting in all things himself as a Mercenary, strives to represent the rest of Mankind, as equally Base and Villanous. Nor can that Advice insinuated into His Majesty, of having the Officers of State Supernumerary in the Committees of Parliament, be supported by any reason, but what borders upon Treason; which is the King's having and being obliged to pursue a separate interest from that of his People; and as nothing would more Universally lose His Majesty the Hearts of his People, than the being wrought into a belief of it; so whatsoever is likely to tempt them into such a persuasion, is at all times, but especially at this, to be industriously avoided by the King.

The only thing remaining, wherein His Majesty's Parliament of *Scotland* seems to be misunderstood by him, is their Vote concerning the Nomination of the ordinary Lords of the Session, and the Election of the President. For that which they propose, both as required by, and agreeable unto their Laws, and as necessary in order to the equal Administration of Justice, is, That
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the ordinary Lords being in a total Vacation nominated by the King, they are to be Tryed, and Admitted or Rejected by Parliament; and that in a particular Vacation, being likewise nominated by the King, they are to be Tryed and Admitted or Rejected by the other Lords of Session; and that in both cases the President be chosen by the Lords of Session themselves. Now this being the great Matter wherein His Parliament is represented unto him, as endeavouring to encroach upon, and subvert His Royal Prerogative; and it being the particular, in reference unto which he hath been prevailed upon to exert an Authority to that height and degree, that there seems no room left for any expedient, but that either the Parliament must depart from their Vote, or that His Majesty would be pleas'd to part with those, who through abusing his Goodness, have misled him into an exercise of Royal Power which the Laws cannot justify. It will be absolutely needful, that the Reader, in order to his being enabled to form a Right and impartial Judgment of this perplexed and intangled Affair, should be first made acquainted with the Vote it self, as well as afterwards be informed of what is to be said in the Vindication of it. The Words therefore of the Vote are as followeth; *The King and Queen's Majesties considering, That by the Laws of the Kingdom, when the place of an Ordinary Lord of the Session doth Vacate, it is to be supplied by the King's Nomination of a fit and qualified Person for the said Office, and presenting him to the rest of the Lords to be tryed, and admitted or rejected by them: And that there is now a total Vacancy of the Lords of the Session, by the happy change through the Blessing of God now brought about, so that there can be no such Tryal by the Lords; and that when such total Vacancies have fallen out, the Lords were either nominated by King and Parliament jointly; or if they were nominated by the King, the nomination was approved, and the Lords so nominated, were admitted by the Parliament; Therefore Their Majesties do Declare, That they will nominate fit and qualified Persons to the said Offices, and present them to the Parliament to be tried and admitted or rejected by them: Likeas Their Majesties with the*
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advice and consent of the Estates in Parliament, Statute and Ordain, that in all time hereafter, when any such total Vacancy shall occur, the nomination of the Lords of the Session shall be by the King or Queen for the time being; and in case of their minority, by their Regent, they nominating fit and qualified Persons to the said Offices, and presenting them to the Parliament to be tryed, and admitted or rejected in manner aforesaid. Like as Their Majesties with the advice and consent aforesaid, ratify and approve the 93d Act of the Sixth Parliament of King James the Sixth, anent the admission of the Ordinary Lords of Session, and Reformation of certain Abuses therein: And the 132d Act of the Twelfth Parliament of King James the Sixth anent the Jurisdiction, Presentation, Qualities and Age of the Lords of the Session, in the whole Heads, Clauses and Articles thereof, and particularly the Clause contained in the said two Acts, Declaring that in all times thereafter, when any place should be vacant in the Session, that His Majesty should nominate and present thereunto a Man fearing God, of good Literature, Practick Judgment and Understanding in the Laws, of good Fame, having sufficient Living of his own, worth Twenty Chalders of Victual of yearly Rent, and who can make good expedition and dispatch in matters touching the Lieges of the Realm; and likewise that Clause contained in the 93d Act of the Sixth Parliament of King James the Sixth, Declaring that the President of the College of Justice shall be elected by the whole Senate thereof, being a Man of the Conditions and Qualities above-written, for choosing and electing of whom the King's Majesty and Estates dispence with that first part of the Institution of the College of Justice anent the Election of the President, Declaring that in case of the absence of the Chancellor and President for the time, it shall be lawful for the Lords to chuse and elect any one of their own number, whom they think qualified and worthiest, who shall be called Vice-President for using of the said Office, ay and while the Return of the said Chancellor and President. Like as Their Majesties, with advice and consent aforesaid, Statute and Ordain, that the whole Qualifications above-mentioned, be duly observed in the admission of the Lords of the Session, in all time coming, and that as well in the case of a total, as of a single Vacancy. This being the Vote so declaimed against, and in contempt whereof, and in opposition

tion whereunto, some Persons having surreptitiously and fraudulently obtained Warrant, Countenance and Authority from the King, are so vent'rous as to dare to act: We shall, both with all the Loyalty and Modesty that becomes a Subject, and an honest Man, and yet with that freedom and plainness, which one who hath no other design, save to serve God, his King, and his Country, with uprightness and integrity should value himself upon, endeavour to vindicate the Wisdom, as well as the Justice of the Parliament in the forementioned Vote. In the performing whereof, with all that exactness which brevity will allow, I shall begin with an account of the first Administration of Civil Justice in the Kingdom of *Scotland* that we meet with in our Records. For the College of Justice consisting of those called the Lords of the Session, not having been institute till the Reign of King *James* the Fifth, *Anno* 1537. The Administration of Justice was before that time, not only ambulatory and itinerant, but was discharged and executed by such Members of Parliament as the Estates of the Kingdom, in their several Sessions elected from among themselves, and authorized thereunto. Nor had they only their whole Authority from the Estates in Parliament, but to speak properly, they were Committees of Parliament Authorized to such a Work and Office, and accountable to Parliaments for the discharge of the Trusts committed unto them; for the *Domini electi ad causas*, whom we so often meet with in the Records of Parliament, particularly in those of the Years 1524. 1526. 1528. were such Members as every respective Parliament elected from within their own Walls, for the Administration of Justice between the King and his Lieges, and between one Subject and another. From whence it appears, that it not only appertained unto the Parliament to see that Justice was duly administered, but that the Right was originally in them of nominating and ordaining the Administrators of it. Which makes it very improbable, that after their having been possessed of such a Right, Authority and Jurisdiction for so long time, they should so wholly part from, and intirely surrender it as upon no Occasion or Emergency whatsoever to leave unto themselves a share, or reserve a concern in it. Let us add to this, That when the

the College of Justice came to be instituted, *Anno 1537* Parl. 5 King *James* the 5th. Act 36. though it was Established and Ordained by the Legislative Authority of the King and Estates joynly, and not by an exertion of meer Royal Prerogative, yet the Estates in Parliament then Assembled, both took upon them. and were allowed the Nomination and Choice of the President, as well as of all that were then called forth and advanced to be Lords of the Session, or College of Justice, as appears by the 39. and 41. Acts of the aforementioned Parliament. Yea it is further evident from the Records of Parliament, that the Estates of the Kingdom did often in succeeding Parliaments Nominate, Choose and Impower, those very Lords that were actually of the Session, to continue in the Administration of Justice, which sheweth beyond all rational contradiction, that they could much less enter upon the Office at first, without their being Chosen and Approved by the Estates in Parliament. Thus *Anno 1542.* being the first of *Mary*, we find the President with the rest of the Lords of Session Chosen and Impowered a new, as *Auditores ad causas*, for the hearing and deciding Civil and Criminal Causes. And again we find the Parliament of the Second of *Mary*, *Anno 1543.* not only ratifying by the Legislative Authority of the Queen and Estates, the Institution of the College of Justice, but we find the Estates alone nominating and choosing *ad causas*, the President *cum ceteris Dominis Sessionis & Collegii Justitiae*. But forasmuch as there was a change given afterwards by Laws to this Course and Method, and a new Regulation ordained by subsequent Statutes of the College of Justice, wherein both the qualifications of those that are to be Chosen Lords of the Session, and the manner of their Approbation are required and appointed: We are therefore obliged in the next place to look into those Laws, and to examine whether they detract from the Prudence, and weaken the Justice of the Parliament, in their fore-mentioned Vote; or whether they not only Countenance and Support, but Justifie and Vindicate them. And We'll begin with the 93 Act 6 Parliament *James 6.* where it being acknowledged, That the Nomina-

tion of the Lords of the Session belongeth unto the King; and that he ought to name such as have the Qualifications there required, which are already specified in the aforesaid Vote; It is further added, *That in all time coming, when an ordinary Place becomes vacant in the Session, the Person nominated thereunto by the King, shall be sufficiently tryed and examined, by a sufficient number of the Ordinary Lords of the College of Justice, for whom it shall be Lawful to refuse the Person presented unto them, and that the King in that Case shall present another, and that so often until the Person presented be found qualified.* But seeing this Act may be said to have passed in the minority of King James, and the force of it be thereupon endeavoured to be eluded, We will therefore consult Act 134. Parl. 12. James 6. wherein, besides a Repetition and a Confirmation of all that is mentioned and ordained in the former Act, there is further added, *That none shall be received to any Place of Senator in the College of Justice, unless he be sufficiently tryed by the whole College of Justice.* Now as those are the Laws relating unto, and regulating the Nomination, Examination and Approbation of the Ordinary Lords of the College of Justice, the Practice hath been in all Times conformable thereunto. So that the First Parliament of King Charles the Second, which through the prevailing of the like Folly and Madness in Scotland, which then reigned in England, rob'd the Kingdom of many of its Rights and Privileges, to increase and enlarge the Prerogative of the Crown; yet they were so tender of making any Innovations in this particular, that by their Second Act of that Parliament they Ordain, *The Nomination of the Lords of Session to remain as in former Times, preceding the Year 1637.* And accordingly we find, as there have been several, who upon single Vacancies in Former Reigns had been rejected by the Lords of the College of Justice, though nominated by our Kings: So there was one Sir William Ballenden, whom Charles the Second had nominated and recommended, who upon examination by the rest of the Lords was refused and rejected, as a Person not Qualified according to the Statutes of the Realm. Is it not therefore unreasonable to be ima-

imagined, That the King, who upon a single Vacancy cannot constitute one Judg, till he be examined and approved, should nevertheless be esteemed impowered to constitute the whole Bench of the College of Justice, without a previous Examination and Approbation? How improvident were our Parliaments, and how weak and ridiculous are our Laws, if all that is provided for, be only the restraining the King from making one Judg that is unqualified; and at the same time to allow him a Power and Authority of making Fifteen that are unqualified, for such they are to be esteemed, till they have been tried and approved? There can be nothing more unquestionable, than that they who are nominated by the King to be Judges, ought, according to the Laws of *Scotland*, to be tried and approved before they be accounted or authorized to sit and act; and therefore, there being upon a total Vacancy, no Lords of the College of Justice to try, examine and approve those whom the King hath nominated and recommended, it would seem to be uncontrollable by all Persons pretending to reason, and acquainted with our Laws and Customs, That the Right of examining, and of admitting or rejecting them, comes to be devolved upon the Parliament; which is the whole that is desired in the forementioned Vote. Nor is there any mean, but that they either must ascend the Bench without undergoing a Tryal, or receiving an Approbation, which is openly to Affront the Laws; or else the Power and Right of approving, and of accepting, or rejecting, must be acknowledged to reside in the Estates of Parliament. Nor was this ever denied them in the Case of a total Vacancy under the worst of the foregoing Reigns. Which makes it the more doleful as well as Amazing, that through the Subornation and Crafty, but false insinuations of Evil Men, there should be an endeavour of wresting it from them under the Reign of so Gracious and Temperate a Prince, whom they with so much Affection and Zeal called and invited to the Throne; not only in gratitude for his having delivered them from Popery, but out of a hope and prospect of his relieving them from all their other Grievances. It hath been already proved

proved beyond the possibility of a Reply; That the first Institution of the College of Justice, and the Nomination as well as Approbation of those that were then advanced to be Lords of Session, was by the Estates Assembled in Parliament. And I do now further affirm, That in the two total Vacancies, which are all that have since occurred, besides this that hath now fallen out upon the late happy Revolution, the Estates in Parliament were indisputably allowed the Right of admitting, or rejecting those of whom the College of Justice was to be freshly constituted; for upon the total Vacancy in the year 1641, which was the first that had been from the Institution of the Lords of the Session, the Parliament not only Challenged the Approving, but they took upon them the joyn't Nomination with the King, of all the Persons that were to be admitted into, and created Members of the College of Justice. But this Example and President, I will not insist upon, seeing there was something unjust and illegal in it, as well as something just and legal. For not being satisfied with the Right of admitting, to which Law and Reason gave them an unquestionable Title, they usurped upon the Crown, and took upon them the Power of nominating, which had been granted by former Laws unto the King. Let us therefore see what was done upon that other total Vacancy, which occurred at the Restauration of *Charles II.* when nothing would have been departed from by the King, that he could have withheld without the highest Injustice; nor any thing either claimed or accepted by the Parliament that they could have sacrificed or surrendered without becoming obnoxious to eminent dangers; and yet even then the King having nominated those whom he designed for the Lords of Session, the Approbation of them was submitted unto the Parliament; and the Estates having in full Parliament consider'd them, they admitted and received them. It is true that the Parliament did not bring them single before them, and there Try and Examine them, not because they might not have done it, but because there was no need of it, being all of
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them of that Eminency, as to be Universally and Notoriously known to have all the Qualifications required by the Statutes. Yea though that Parliament was abundantly officious towards the Crown, and Loyal to that excess to the King, as to be Disloyal to their Countrey, and unfaithful to their Constituents; Yet in the Second Act of their first Session, by which they restore to the King what had been wrested from him in the Parliament 1641, they allow him no more in reference to the Lords of the College of Justice, but the right of nomination as the Crown had enjoyed it, preceeding the Year 1637. But I hear there are some, who finding His Majesty unalterably resolved not to depart from the known and just Laws of the Land in the Governing of his People, have therefore, to elude the force of what hath been here Represented, and to divert His Majesty from hearkning to the humble desires of his Parliament in this matter, been guilty of the Treachery as well as the Impudence to suggest unto His Majesty, That there is not now a total Vacancy, there being of the fifteen nominate by His Majesty for Lords of the Session, three that were antecedently such; and that it belongeth unto them Three to try and approve the others; and that what the Parliament pretends unto, being only in the Case of a total Vacancy, is here wholly Superceded; and that for any to insist upon it, is an incroachment upon the Prerogative of the King, and a robbing of the Lords of Session, of a Privilege vested in them by Law. Now tho all that is here insinuated, be rather the Offering an Affront to our Understandings, than the Accosting us with a reasonable Objection; yet we will so far condescend to the weakness of those that are ignorant of the Laws and Customs of *Scotland*, as to return such a Reply unto it, which may not only convince all Mankind of the incontinency of it, but expose those that are the Authors of it, to be either loathed as ill men, or ridiculed as silly. For First, Supposing that S——, N——, and M——, who are all that can be referred unto in the pretended Objection, did still remain Lords of the College of Justice, by Reason of their having formerly been so: Yet they are too few to constitute a Session, which they ought to be, before they take

take upon them to Try and Approve such as are recommended unto them by the Kings nomination. The *Quorum* of which a Session ought to consist, before it can Exercise any Legal Authority, should be Nine, which I think no Arithmetick will make Three to be. Nor will my Lord S——, and his Son Sir J. D——, find that Success in their Attempts against the first and self-evident Principles of natural Sciences, and of the Mathematicks, that they have had in Undermining and Subverting the Laws of their Countrey. Secondly, for any Person named by the King in order to the being received as a Lord of the Session to be examined and approved by Three, tho granted to be Actual and Sitting Lords of the College of Justice, is expressly repugnant to an Act of the Session it self, confirmed by the King's Letter, *An. 1674.* It being provided by that Act, That when any new Lords of Session shall be presented by His Majesty for Tryal of their Qualifications, that they shall be present one day in the Outer-House, where they are to inspect a Process that shall be carried to *interloquitor*, and from thence make Report of all the Points therein contained, to the whole Lords of Session; and then for completing their Tryal, shall sit another day in the Inner-House; and after the bringing the dispute of some point of Law to a Period, shall give their Opinion about it in presence of all those Lords of which that House doth then consist. Now as this Order and Rule is appointed to be observed constantly in all time coming, about the Tryal of Lords nominate by the King, and to be admitted, and hath been accordingly observed and practised ever since, till the present Vacancy; so it is evident to all who have not renounced common sense, that the Regulation, Order, and Method of Tryal, prescribed by the foregoing Act, is altogether impracticable, where the Lords that are to be the Tryers, and Examinants, are to be three. But then thirdly, It is the most absurd thing imaginable to fancy, That because Three of the Lords now nominated by the King, were heretofore Lords of Session, that therefore there hath not been a total Vacancy upon this late and happy Revolution. I am sure that in the parallel Case, *Anno 1665.* the Parliament in the Preface unto the Statute, by which they

they admitted those to be Lords of the Session whom the King had then named, they call it a new and intire nomination, which they neither could nor would have done, if they had not judged the Vacancy to be total, and yet three of the Lords then nominated by *Charles* the Second, *viz.* *H*—— *C*—— and *L*—— had been Lords of Session, and had sate in the College of Justice before that nomination. Fourthly, If *S*—— *N*—— and *M*——'s having been once Lords of Session be enough to hinder the late Vacation of the Session from being total; then I challenge all the World to tell me what can either make a single, or a total Vacancy; yea, if those Gentlemens Places were not voided after what had befallen them, and the placing others for several years in their room, I do much question whether their death can make their Places Vacant, and whether they may not be as well said to remain Lords of the Session, when they are rotting in their Graves, as to have continued so in the State they were, before His Majesties late nomination of them. For as they all had their Commissions during pleasure, so *S*——'s and *N*——'s were recalled and reassumed by King *Charles*, of whom they had received them. And I take it for an undoubted Maxim, that he who hath Power and Authority to give, and giveth not during life, may by the same Authority take away at Pleasure, what he hath given. And as for *M*—— who had his Commission from King *James*, if his Place be not rendered Vacant by his Masters having forefaulted the Crown, nothing will or can render it so.

Fifthly, If these Gentlemens having been heretofore Lords of the College of Justice, hindreth the late Vacancy from being accounted total; then His Majesties nominating them afresh, was not only superfluous in it self, but an injury unto them. For it was the bringing them to hold that by a new Title, which they had a claim unto, and ought to have been accounted possessed of by an ancient Right. Nor are they obliged for their Places to His Majesties Grace and Bounty, but to his Justice. Sixthly, The

very form of the presentation by which their nomination is signified, shews that the Vacancy was taken to be total. For it being the constant Custom in all single vacancies, that the name of the Person succeeded unto, as well as his who is to succeed, be equally expressed in the Presentation, and there being no such form, but the contrary observed in these Gentlemens Case, it is an Argument that His Majesty took the Vacancy to be total, whatsoever his President, Secretary and Advocate do. Seventhly, In all Cases where the Vacancy is not Universal, the Presentation of those named by the King, is directed to the College of Justice, or the Actual Lords of Session, and so our Laws ordain and provide it should be. But the Presentation of those now named to be received and advanced unto the Administration of Justice, or at least of most of them, was directed to the Earl of C—— who never was a Lord of the Session, nor yet is : Which is an Evidence, that the holding the late Vacancy not to have been total, was not an Opinion they were led into by truth, but by necessity, and that they have only espoused it to justify what hath been illegally done. It is yet further alledged by these cunning Men, that have first endeavoured to mislead His Majesty, and now seek by what pretences they may best defend that which they have done ; That though, by the Ancient Laws, the King was only trusted with the nomination of the Lords of the Session, and the tryal and approbation of them was lodged elsewhere ; Yet that by Act, 11. Parl. 1. Charles the Second, the sole choice and appointment of the Lords of the College of Justice is given unto and settled upon the King. But surely they who make the exception must be Men either of very weak understandings, or of very bad consciences, and they must think they have to do with a very credulous sort of People, whom they may bubble into the belief of any thing, though never so false and unreasonable, otherwise they would never talk at so ridiculous and impertinent a Rate. For, First, there is nothing granted unto the Crown by that Act, but what
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was its ancient and undoubted right : instead of settling any new Prerogative upon the King, the Parliament does only there declare what was anciently the Inherent Privilege of the Crown, and an undoubted part of the Royal Prerogative of the Kings of that Kingdom : Which I am sure that the trying, approving, and accepting or rejecting those nominated for Lords of Session never was, that having been by so many preceding Acts of Parliament, which we have mentioned, settled and vested in other hands. Secondly, Whatsoever can be supposed to be granted unto the Crown by Act 11. Parl. 1. *Charles the Second*, it doth as much affect a single Vacancy as a total ; the words being, *That it is an inherent Privilege of the Crown, and an undoubted part of the Royal Prerogative of the Kings of Scotland to have the sole choice of the Lords of Session.* Which can import no more, save that they have the sole nomination of them, but not the tryal of their qualifications, seeing all along since, both in that Reign, and in the next that ensued, the examination and acceptance or refusal of those that were recommended by the two last Kings upon emergent Vacancies to be Lords of the College of Justice, were always certified to the Actual and Sitting Lords of Session, to be by them tryed, and admitted or rejected as they should see cause. Thirdly, What the Gentlemen who make this Exception would give the Crown with one hand, they take away with the other. For while they would Preclude the Parliament from taking notice of the qualifications of those, who upon a total vacancy are nominated by the King, under a pretence that the sole choice of the Lords of Session, is by the forementioned Statute Declared to be an Inherent Privilege of the Crown : They at the same time seek to skreen and vindicate themselves from the Violation of the other Laws that prescribe the method of trying and approving those who are nominated now by His Majesty for Lords of the College of Justice, by alleging, that *S* — *N* — and *M* — are both in a capacity through having been formerly Judges, and are

commissiōnated to try and approve them. Fourthly, All that some apprehend to be contained in the 11 Act Parl. 1. *Charles* the Second, is wholly Narratory, and no part of it Statutory, at least so far as our concernment lies in it, and as we are therein referred unto other Acts for the knowledge of what is Statuted and Ordained: So upon our application unto, and consulting of Act 2. Parl. 1. *Charles* 2. all we find there enacted is, *That it is an inbred Privilege of the Crown, and an undoubted part of the Royal Prerogative of the King, to have the sole Choice and Appointment of the Officers of State and Privy Counsellors, but that he hath only the Nomination of the Lords of Session, as in former times preceding the year 1637.* and what that was we have already shewed, and do find it to be so far from interfering with, or derogating from what the Parliament doth now insist upon and demand, that it both warrants and justifieth it. I may fithly subjoyn, That upon supposition that the Act 11. Par. 1. *Charles* the Second were Statutory, which it no ways is; yet there is a later Act pass'd in the said first Parliament of King *Charles* the Second, though unprinted, yet upon Record in our Registers of Parliament, and which was purposely made for the Regulation of the College of Justice, and about the admission of the Lords of Session, as the very title and rubrick bears; wherein all that we find Enacted, is, *That the King, instead of having the sole choice of the Lords of Session, shall only have the Nomination of them, as the Crown stood possessed of it in times before the year 1637.* and that their admission in all times to come shall be according to the Laws and Acts which were in being before the year which we have already mentioned. So that fancy what they will beyond this, granted unto the King by Act 11. yet it is all withdrawn, and reasumed from him by this later Act of *April* the 5th.

All that now remains to be further added on this Subject, so far as concerns the controversial part, is to inquire whether the King hath at all times the sole Power and Right of chusing and appointing the President of
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the Session? And we presume with all humility to say, that by the Laws of the Kingdom, and according to ancient Practice and Custom, he hath it not, nor can he legally lay claim unto it, seeing by Act 93. Parl. 6. *James 6. Anno 1579. It is Statuted and Ordained, That the President of the College of Justice shall be always chosen by the whole Senators of the said College.* Which Statute is confirmed by Act 134. Parl. 12. *James 6.* wherein it is expressly declared, *That the King with advice of the Estates, doth ratifie and approve all the Acts made either by his Majesties Predecessors, or by his Highness himself before, upon the Institution of the College of Justice, and the Reformation of the abuses thereof.* Nor can it be denied, but the appointing that the President should be chosen by the whole Senators, was designed as the Reformation of an Abuse in the College of Justice, which either had not been provided against, and obviated in the first Institution of the Session, or which had crept in afterwards. And as this was the Law about the Election of the President, so the Practice was always conformable thereunto, until that my Lord S— came to be constituted President by King *Charles the Second*, and was illegally obtruded upon the Lords of Session, without the being either chosen or approved by them. For from the time of the making the Act until then, there was not one that had ever sat President, but who had been chosen by the Lords of the College of Justice, except Sir *John G—*, who upon being nominated and recommended by the King in the Case of the total Vacancy *Anno 1661.* was approved and confirmed by the Estates in Parliament. But for the Lord P—, the Lord U—, the Lord C—, Sir *Robert S—*, and the Lord D—, who were all that had been Presidents from 1579. until 1661. they were every one of them chosen and admitted by the Lords of Session. Nor is it unworthy of Remark, that the Lords of Session, upon every Election they made of a President, declared that they did it in conformity unto, and in pursuance of the Act of Parliament. And as
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King *Charles's* departing from the Law in this particular, was one of the first steps towards Arbitrary Power, so it was both in order to farther Incroachments upon our Laws and Rights, and prepared the way for most of the Tyranny that he exercised afterwards. And as S—— assuming the Office of President, upon the illegal choice of the aforementioned King, was both an Affronting, and Betraying of the known Laws of the Kingdom; so his whole Behaviour in that Station was of one piece and complexion with his entering upon it, being a continued Series of Oppression and Treachery to his Country. For besides that all his Verdicts between Subject and Subject, were more ambiguous than the Delphick Oracles, and the occasion of the Commencement of innumerable Suits in place of the determining of any; he was the principal Minister of all L——'s Arbitrariness, and of King *Charles's* Usurpations. Nor was there a Rapine or Murder committed in the Kingdom under the countenance of Royal Authority, but what he was either the Author of, the Assister in, or ready to justify. And from his having been a Military Commander, for asserting and vindicating the Laws, Rights, and Liberties of the Kingdom against the little pretended Invasions of *Charles I.* he came to overthrow and trample upon them all in the quality of a Civil Officer under *Charles II.* Nor is there a Man in the whole Kingdom of *Scotland*, who hath been more accessary to the Robberies and Spoils, and who is more stained and died with the Bloody Measures of the Times, than this Lord S——, who his Majesty hath been impos'd upon to constitute again President of the College of Justice. And as an aggravation of his Crimes, he hath perpetrated them under the vail of Religion, and by forms of Law; which is the bringing the Holy and Righteous God to be an Authorizer and Approver of his Villanies, and the making the Shield of our Protection to be the Sword of our Ruin. But there being some hopes that the World will be speedily furnished with the

the History of his Life, I shall say no more of him, but shall leave him unto the expectation and dread of what the famous Mr. *Robert D*— foretold would befall them him in his Person and Family, and of which having tasted the first Fruits in so many astonishing Instances, he may the more assuredly reckon upon the full Harvest of it. And the Method he hath lately begun to steer is the most likely way imaginable to hasten upon him and his, what that Holy, and, I might say, Propheticall Man denounced against them. For whereas the Nation would have been willing upon his meer withdrawing from Business, and not provoking their Justice by crouding into the Place in which he had so heinously offended, to have left him to stand or fall at the great Tribunal, and to have indemnify'd him as to Life, Honour and Fortune here, upon the consideration of his having co-operated in the late Revolution, and of his having attended upon his Majesty in his coming over to rescue and deliver the Kingdoms from Popery and Slavery: He seems resolved to hasten his own Fate, and through putting himself by new Crimes out of the Capacity of Mercy, to force the Estates of the Kingdom to a punishing of him, both for them and for the old. But to return to what we are upon, about the Right of Electing a President of the Colledge of Justice: It is excepted, to what hath been said, in proof that the Power is by Law in the Lords of Session to choose their own President; that Sir *John G*—, was, upon King *Charles* the Second's nomination, approved and confirmed in Parliament, Anno 1661. which was a divesting of the Lords of Session of it, and a virtual rescinding all the Laws by which that Power had been settled upon them: To which I have several things to reply, that will discover both the Impertinency of the Objection, and the Treachery of those who have insinuated it to the King.

First, It is acknowledged in the very Exception, that the sole Choice of Sir *John G*— as President, was not in

in King *Charles*, seeing the Parliament had the Approving, Allowing and Admitting of him, which makes that case to differ very much from the Present In which the choosing of the President is not only taken away from the Lords of the Session, but the approving and admitting of him is denied to the Estates of the Nation in Parliament assembled.

Secondly, What was done in Ordaining Sir *John G*— President, was not a repealing of the Laws, by which the Choosing of the President is vested in the Lords of the Session, but was at most only a dispensing with them in that extraordinary case of a total Vacancy, and in reference unto a Person of a most unspotted Integrity, and unparalleled Knowledge in the Laws. Nor will any Man, pretending to acquaintance with Parliamentary Customs and Proceedings, reckon that a Law is therefore rescinded and abrogated because the Parliament hath seen reason to supersede it in a single Instance, and in a particular case. Laws once Enacted and established are never accounted to be abrogated, unless by particular future Laws formally repealing them, or by posterior general Statutes inconsistent with, and destructive of them. Nor do Two or Three particular Instances, varying from, and repugnant unto them, bring them so much as into disuse and desuetude; but even in order to that, there must be immemorial Prescription against them, and that without being disallowed or complained of in Parliament.

Thirdly, What the Parliament did, *Anno 1661.* in the Case of Sir *John G*—, it was not properly done by them in their Legislative capacity, but as a part of the Supreme Authority of the Kingdom, concurring with the King in an Act and Deed of the *Supremum imperium*, and illimited Power of the Government, which the appointing of Judges for the equal administration of Justice came to be at that season and conjuncture, by reason of the total Vacancy, and the impossibility that thereupon ensued of Choosing and Ordaining the Lords

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of Session, whereof the President is always one, in the ordinary Legal and Established Methods. What the King and the Estates of Parliament did in the case of that Vacancy of the Colledge of Justice, was much of the Nature of, and parallel unto, what the Estates alone have done upon the late Vacancy of the Throne; wherein they acted not in the way of a Legislative Body, but in the Vertue of that illimited Power which resided in them, as Representatives of the whole People, and who knew no other Measures whereby to act; but what lay most in a tendency to the Publick Safety.

Fourthly, The King's having a Right to choose the President of the Session, is disclaimed and ridicul'd by those very Persons that have advised him to challenge it: For my Lord S——, in whose Favour, and in pursuance of whose Advice, his Majesty hath claimed a Right, and exerted an Authority of appointing a President, hath, by the Method of his entering upon that Office and Station, renounced the Legality of his Majesty's acting in that particular, and declared that he holds not his Place by vertue of the King's Choice and Designation. For after he had prevailed upon the King to elect and send him down President of the Session, the first thing he did at their Meeting, and that in order to the throwiag the blame upon his Majesty of all that had been transacted before, was to wheedle that over-aw'd and pack'd Bench, to choose him for President of the Colledge of Justice: which as it shews the Disloyalty and Treachery of the Man, so it testifieth and publisheth his Folly. For how could they be in a capacity as Lords of Session to choose him for a President; that were not antecedently, legally, tryed and approved themselves? And who knowing their own unqualifiedness, both as to Literature and good Fame, made his Majesty's having nominated them, an excuse from their undergoing a Tryal. For though it be both required by the Laws, and was accordingly given out all along here, that they should be tryed; yet Five of

them being conscious unto themselves how little they answered the Qualifications prescribed in the Statutes, refused to submit to be examin'd, under a Pretence that they would not thereby weaken his Majesty's Right and Authority in his having elected them. And thus the King's Authority is doubly exposed, by those who call themselves the Ordinary Lords of Session, in excusing themselves from a Tryal, which was never designed they should do, seeing S—, M— and N—, were both appointed, and said to be in a capacity to examine them: And then by him who is stiled President, through its being made a Stale for his obtaining the Name, and renounced for the Choice of the Bench, as that which alone must give him a Legal Title. Whereas if the King's Choice of him be not according to Law, and sufficient to justify his entrance upon his Office, Why did he abuse his Majesty in telling him that it was? And if it be the King's Right, and a part of his Prerogative, to elect the President, Why hath he sacrificed his Majesty's Honour, and given away his Legal Power, in the submitting to hold the Office by any other Tenure? Howsoever we are come to be Gainers by this Carriage of S—, how much soever the King is a looser by it. For his surrendring from the King the Right of choosing a President, is a Vindication of the Justice of the Parliaments Vote and Demand. Besides, here is an end put to that Pretence which they have been endeavouring to sham upon the World, viz. That S— was only restored to the Presidency of which he was violently dispossessed, and that he was not chosen unto it as unto a Place whereunto he had not a Right. So that either the Choice made at *Edinburgh* overthrows the Plea used at *London*, about his being merely restored; or else that whereby they do here seek to justify his Majesty's Proceedings in reference to S—'s being President, condemns what the *Protem* hath there betaken himself unto, of being elected by those called the Lords of the Colledge of Justice. To which I shall only add,
That

That as he was never legally President before, so he is as little President now. His assuming the Office then, when he was not chosen by the Bench, as the Law ordains, made him an Usurper; and his entering upon the Place again, upon the Choice of those that are not Judges, by reason of their not being tryed as the Statutes appoint, leaves him under the same Crime and Imputation.

So that having now dispatched, all that is either Historical or Argumentative about the several Heads in difference between the Parliament of *Scotland*, and a few unadvised or ill designing Men about His Majesty: I shall shut up this Discourse with some Political Reflections upon the whole. Whereof the first is, That it is not the having barely a good King that renders a People happy, but much of it must arise from his having good Ministers about him. For no Nation had ever a better Prince than we at present have, and yet we find there is cause of complaint, by reason of the Ill Counsellors that possess his ear. We do not think that he entertains them out of choice, yet that will not give his People ease, though it may for a while suppress their Murmurings. His Majesties being so little acquainted with Men at his first coming over, might lay him open to be misled in the choice of His Officers: But to continue to use them after he hath had sufficient means as well as opportunity of knowing their Characters, will leave an imputation not only upon his Goodness, but upon his Wisdom. For as the People have no other way of judging of the goodness of their Prince, but by finding his Officers and chief Ministers to be such: so if these be not, they may possibly acknowledg *William* to be a good Man, but they will never beleive that the King is so. And *Machiavel's* observation, That a wise King will always find wise Ministers, is no more than what every Man is perswaded of upon the first Principles of Reason, and of common sense. I do acknowledg, that ill Men have ways of thrusting themselves upon Princes, which they that are virtuous think too unworthy and below them to use. For whereas the later are always modest, and seek no recommendati-

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ons but from their own Merit; the former are importunate, &c can both flatter & bribe Favorites to speak well of them. It was a severe Prediction as well as Observation, which the late Prince of *Conde* made upon the News of King *Charles* the Second's Death, and of his Brothers succeeding him, *viz.* That he was like to be well served, through having none about him, but his own Fools, and his Predecessors Knaves. How may Wise Men then imagine his Present Majesty is like to be served, who though he hath not the Fools of the last Reign about him, yet he hath both the Knaves of that and of the former? Nor is it of any great advantage at least to *Scotland* to be delivered from the Fools of the last Government, seeing there are weak Men enough besides those, and some of them trusted with the chief conduct of the *Scotch* Affairs. For how else could it be, that of all the Publick Orders remitted thither, there hath not been one, which either the meeting of Estates, the Parliament, or the Privy Council have not voted to be illegal? In reference unto which, as we do acquit the King from all blame, seeing he cannot be supposed to be acquainted, yet, either with the *Scotch* Laws, or with their Forms, and does only sign what others prepare for, and offer unto him; so we are not willing to ascribe it so much to the Treachery and Malice of his Minister, as to his simplicity and weakness: Who though he may possibly be an honest Man, and indifferently versed in common Affairs, yet he hath no great knowledge of the Laws, and is but a Puny in the Politicks, by reason of which he comes to rely upon other Mens advice, who instead of instructing and assisting him to serve the King, make him a Tool for promoting ends and designs directly opposite to His Majesties Service and Interest. But then I should observe, Secondly, That one illegal stop doth lead to many: Nor is one Arbitrary thing to be supported but by another. It hath been hitherto taken for an undoubted Truth, That though the Estates Assembled in Parliament have not alone a Legislative Power, so as to enact Laws without the King, yet that they have the

Supream

Supream and Uncontrovertible Power of declaring the Meaning, and Sense of those Laws that are already Enacted and Established. So that when the Parliament hath once declared the Sense and Meaning of any Law, all Courts of Judicature, as well as particular Persons, are bound to acquiesce in their explanation of that Law. And to divest the Parliament of this, is to strip them of one of their chiefest Priviledges, and to detract from and diminish their Authority, which is Treason by the Law of Scotland. For it is expressly declared by Act 120. Parl. 8. James 6. *That whosoever in time coming shall take upon him, to impugne the Dignity and Authority of the three Estates, or shall seek or procure the innovation or diminution of the Power and Authority of the Three Estates, or of any of them, shall be guilty of Treason.* Yet when the Present Parliament had declared the sense of the ancient Laws to be, that the King in a total Vacancy could not appoint Judges without their being admitted by Parliament, the advance that had been made against our Laws, in His Majesties assuming a Right of Electing and Authorizing them, hath been seconded with an impugning, despising, and subverting that Authority of Parliament which we have been speaking of. Nor hath the Invasion upon Parliamentary Rights and Priviledges terminated here, but there hath been a further assault made upon them, both by the Councils assuming the Cognizance of that, which was lodged before the Parliament, and by their Actings determining in it contrary to the Vote, and Declaration of the Estates, who are the Supream Judicature, and in conjunction with the King, the one Legislative body of the Kingdom. For it is an unquestioned Maxim, That when a matter is once brought and tabled before the Parliament, so as they have laid their hands upon it, it is not afterwards to fall under the Cognizance, or Determination of the Council, or of any inferior Judicature, unless remitted expressly unto them by the Parliament it self. And therefore the Parliament having given a stop to the opening of the Signet, and to the sitting of the Session, till

the King's further pleasure was made known to them, and until that matter should be brought to such an Accommodation, as was consistent with the preservation of the Laws of the Kingdom, it was a high Invasion upon the Authority and Jurisdiction of the Parliament, for the Council to meddle in it. But this they were aw'd unto by those who had given the King advice to chuse the Lords of Session and President, and who knew no way to justify one illegality but by another. Yea, our Ministers, in order to make the first Act of Invasion upon the Laws which they had thrust the King upon successful, and to prevent their receiving a baffle upon their first setting out on the road of Arbitrariness, sent menacing Letters to those that were nominated Lords of Session, threatening them with ruin if they did not sit at the time that they were appointed; and had it not been for those Letters, several had forborn to act, as knowing they could not lawfully do it. And as the sending those Letters sheweth that the Ministers here were convinced that they had counselled the King to an illegal Thing, but which was to be supported in the same manner: So these Gentlemen of the long Robe, who contrary to their own Judgment, were influenced to sit, and to transgress known Laws, have declared how Unworthy and Unqualified they are to be received and approved by Parliament, as Lords of the College of Justice. And to Crown all these Miscarriages in Government with one more, his Majesties Ministers being fully sensible, that they whom they call Lords of Session, were neither legally appointed, nor could legally meet and sit; they therefore resolved forcibly to support what they had unjustly begun and done; and accordingly, against the day and time those Gentlemen were to sit, they ordered all the Forces, which were drawn in unusual Numbers about *Edinburgh*, to be in a readiness upon beat of Drum, that what they had Arbitrarily begun, might be Violently maintained. Which as it was an applying, and using of his Majesties Troops, upon a much differing

Design

Design, than that for which the Parliament had consented to their being raised and paid : So it had been much more for his Majesties Honour, and the Benefit of his Kingdom, that they had been all employ'd against *Cannon*, who is still making Inroads, and committing Robberies upon several of his Majesties Loyal Subjects; and who by the ill Conduct and treasonable Counsel of some of his Majesties Ministers, seems to have been connived at and forborn, since the last defeat that was given him, for no other reason, but that there may be a stand for other Rebels in due time to go unto. But that which I would observe, Thirdly, and in the last place, is, That his Majesty for his own Honour and Safety, and for the Peace and Welfare of his People, ought to make some Change and Alteration of his Ministers. For it is evident, That they who are employed as Instruments of Oppression, Rapine and Murder, under an ill Government, can never be of use unto, nor for the reputation of a good. It is evident, That he is betrayed; nor is it so difficult to know by whom, and how. For Things speak, when Men either dare not, or will not. And Advices are not to be judg'd of by the Quality and Profession of the Persons that give them, but by the tendency of the Counsels that are given. For example, They cannot design well unto his Majesty, who tell him, That he must not make haste to conquer his Enemies, until he have first screw'd up his Prerogative; and that he is to improve the dread his People are under of King *James*; for wresting from them what he can, before he attack him. Again, they cannot intend his Majesties Interest, who would have him overlook the Crimes and Treasons that are daily committed against him, seeing the conniving at Rebels can only be to encourage Rebellion. Again, they who advise him to be King only of a Party, and not of the whole People, have a mind he should be King of none. And to counsel him either not to use those in his Service who are both willing to serve him, and would do it with the utmost Fidelity; or to use those whose Carriage speaks them to be

in the Interest of his Enemies, it is to have him betrayed instead of being served. Nor can they be for his Continuing upon the Throne, who would have hindred his Ascent unto it. And whosoever embarrasseth him with his Parliaments, and by it retards Succours for the Support of the War, can mean no less than that his Majesty and his Kingdom should become a Prey to King *James*, and to his Brother of *France*. And they who counsel him to go on where his Predecessor left off, have a mind to see a new Abdication, though they were not for the Old. But what might be said upon this Head, requireth rather an intire Discourse, than to be confined unto a short Remark. And therefore all I shall add is, That as his Majesty must be infallibly lost, without a speedy Change as to some of his Ministers, so he needs not to fear them, if they be but once thrust out of his Councils; seeing all the hurt that they are able to do him, is through their being there. And if he will but own himself, and assert his own Interest, he will have enough of those to stand by him, who have no Interest but what is his.

F I N I S
